

VIRGINIA ACTS OF ASSEMBLY -- 2020 SESSION

CHAPTER 833

An Act to amend the Code of Virginia by adding a section numbered 15.2-2305.1, relating to affordable housing dwelling unit ordinances.

[S 834]

Approved April 7, 2020

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 15.2-2305.1 as follows:

§ 15.2-2305.1. Affordable housing dwelling unit ordinances.

A. In furtherance of the purpose of providing affordable shelter for all, the governing body of any locality, other than localities to which § 15.2-2304 applies, may by amendment to the zoning ordinances of such locality provide for an affordable housing dwelling unit program. Such program shall address housing needs, promote a full range of housing choices, and encourage the construction and continued existence of housing affordable to low-and-moderate-income citizens by providing for increases in density to the applicant in exchange for the applicant voluntarily electing to provide such affordable housing. Any local ordinance providing optional increases in density for provision of low-and-moderate-income housing adopted before December 31, 1988, shall continue in full force and effect. Any local ordinance may authorize the governing body to (i) establish qualifying jurisdiction-wide affordable dwelling unit sales prices based on local market conditions, (ii) establish jurisdiction-wide affordable housing dwelling unit qualifying income guidelines, and (iii) offer incentives other than density increases, such as reductions or waivers of permit, development, and infrastructure fees, as the governing body deems appropriate to encourage the provision of affordable housing. Counties to which § 15.2-2304 applies shall be governed by the provisions of § 15.2-2304 for purposes of the adoption of an affordable housing dwelling unit ordinance.

B. Any zoning ordinance establishing an affordable housing dwelling unit program pursuant to this section may include reasonable regulations and provisions as to any or all of the following:

1. For application of the requirements of an affordable housing dwelling unit program to any site, as defined by the locality, or a portion thereof at one location that is the subject of an application for rezoning or special exception or site plan or subdivision plat which yields, as submitted by the applicant, at an equivalent density greater than one unit per acre and that is located within an approved sewer area.

2. The waiver of any fees associated with the construction, renovation, or rehabilitation of a structure, including but not limited to building permit fees, application review fees, and water and sewer connection fees.

3. For standards of compliance with the provisions of an affordable housing dwelling unit program and for the authority of the local governing body or its designee to enforce compliance with such standards and impose reasonable penalties for noncompliance, provided that a local zoning ordinance provide for an appeal process for any party aggrieved by a decision of the local governing body.

4. For establishment of a local housing fund as part of its affordable housing dwelling unit program to assist in achieving the affordable housing goals of the locality pursuant to this section. The local housing fund may be a dedicated fund within the other funds of the locality, but any funds received pursuant to this section shall be used for achieving the affordable housing goals of the locality. A locality shall not condition the submission, review, or approval of any application for a housing development upon a contribution by the applicant to the locality's housing trust fund.

5. For reasonable regulations requiring the affordable dwelling units to be built and offered for sale or rental concurrently with the construction and certificate of occupancy of a reasonable proportion of the market rate units.

6. For administration and regulation by a local housing authority or the local governing body or its designee of the sale and rental of affordable units.

7. For a local housing authority or local governing body or its designee to have an exclusive right to purchase up to one-third of the for-sale affordable housing dwelling units within a development within 90 days of a dwelling unit being completed and ready for purchase, provided that the remaining two-thirds of such units be offered for sale exclusively for a 90-day period to persons who meet the income criteria established by the local housing authority or the local governing body or its designee.

8. For a local housing authority or a local governing body or its designee to have an exclusive right to lease up to a specified percentage of the rental affordable dwelling units within a development within a controlled period determined by the housing authority or the local governing body or its designee, provided that the remaining for-rental affordable dwelling units within a development be offered to persons who meet the income criteria established by the local housing authority or the local governing

body or its designee.

9. For the establishment of jurisdiction-wide affordable housing dwelling unit sales prices by the local housing authority or the local governing body or its designee, initially and adjusted semiannually, based on a determination of all ordinary, necessary, and reasonable costs required to construct the affordable dwelling unit prototype dwellings by private industry after considering written comment by the public, the local housing authority, or an advisory body to the local governing body, and other information such as the area's current general market and economic conditions, provided that sales prices do not include the cost of land, on-site sales commissions, and marketing expenses, but may include, among other costs, builder-paid permanent mortgage placement costs and buy-down fees and closing costs except prepaid expenses required at settlement.

10. For the establishment of jurisdiction-wide affordable dwelling unit rental prices by a local housing authority or the local governing body or its designee, initially and adjusted semiannually, based on a determination of all ordinary, necessary, and reasonable costs required to construct and market the required number of affordable dwelling rental units by private industry in the area, after considering written comment by the public, the local housing authority, or an advisory body to the local governing body, and other information such as the area's current general market and economic conditions.

11. For a requirement that the prices for the sales and rentals of affordable dwelling units subsequent to the initial sale or rental transaction be controlled by the local housing authority or the local governing body or its designee for a period of not less than 15 years nor more than 50 years after the initial sale or rental transaction for each affordable dwelling unit, provided that the ordinance further provides for reasonable rules and regulations to implement a price control provision.

C. For any building that is four stories or taller and has an elevator, the applicant may request, and the locality shall consider, the unique ancillary costs associated with living in such a building in determining whether such housing will be affordable under the definition established by the locality in its ordinance adopted pursuant to this section. However, for localities under this section in Planning District 8, nothing in this section shall apply to any elevator structure four stories or taller.

D. Any ordinance adopted hereunder shall provide that the local governing body shall have no more than 280 days in which to process site or subdivision plans proposing the development or construction of affordable housing or affordable dwelling units under such ordinance. The calculation of such period of review shall include only the time that plans are in review by the local governing body and shall not include such time as may be required for revision or modification in order to comply with lawful requirements set forth in applicable ordinances and local regulations.

E. Any zoning ordinance establishing an affordable housing dwelling unit program under this section shall adopt the following regulations and provisions to establish an affordable housing density bonus and development standards relief program:

1. Adopt procedures for processing an application authorized under this subdivision, which shall include a provision for a list of all documents and information required to be submitted with an application for a housing development. Procedures authorized by this subdivision shall require the zoning administrator or his designee to make an official determination in writing within 30 days of the application date as to each of the following, as applicable: (i) the amount of density bonus, calculated pursuant to subdivision 2, for which the applicant is eligible; (ii) if the applicant requests a parking ratio pursuant to subdivision 4, the parking ratio for which the applicant is eligible; and (iii) if the applicant requests waivers or reductions of development standards pursuant to subdivision 3, whether the applicant has provided adequate information for the locality to make a determination as to those waivers or reductions of development standards. An appeal by a party aggrieved of an official determination pursuant to this subdivision shall be made to the board of zoning appeals pursuant to § 15.2-2311.

2. The locality shall grant a density bonus, the amount of which shall be as specified in the corresponding table accompanying this subdivision, when an applicant voluntarily seeks and agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this section, that will contain at least:

a. Ten percent of the total units of a housing development deemed affordable, as defined in this section, for low-income households; or

b. Five percent of the total units of a housing development deemed affordable, as defined in this section, for very-low-income households;

For housing developments meeting the criteria of subdivision a, the density bonus shall be calculated as follows:

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
16	29

17	30.5
18	32
19	33.5
20	35
21	36.5
22	38
23	39.5
24	41
25	42.5
26	44
27	45.5
28	47
29	48.5
30	50
31	51.5
32	53
33	54.5
34	56
35	57.5

For housing developments meeting the criteria of subdivision b, the density bonus shall be calculated as follows:

<i>Percentage Very-Low-Income Units</i>	<i>Percentage Density Bonus</i>
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35
12	37.5
13	40
14	42.5
15	45
16	47.5
17	50
18	52.5
19	55
20	57.5
21	60
22	62.5
23	65
24	67.5
25	70
26	72.5
27	75
28	77.5
29	80
30	82.5
31	85
32	87.5
33	90
34	92.5
35	95

For housing developments meeting the criteria of subdivision a or b, an applicant shall be awarded an increase over the otherwise maximum allowable gross residential density as of the date of application by the applicant to the locality, or, if elected by the applicant, a lesser percentage of density increase, including but not limited to no increase in density.

3. An applicant for a density bonus pursuant to subdivision 2 a or b may request a waiver or reduction of local development standards that (i) physically preclude the construction of a project at the density permitted by this section or (ii) impact the financial feasibility of a project submitted pursuant to this section. The locality shall grant the waiver or reduction of local development standards requested by the applicant unless the locality is able to make a written determination that such waiver or reduction would have a specific, adverse impact upon health, safety, or the physical environment. The locality may also recommend to the applicant modifications of the initial request for waiver or reduction of local development standards that would satisfy the locality's concerns. Nothing in this subsection shall be interpreted to require a locality to waive or reduce development standards that would have an adverse impact on any real property that is listed in the Virginia Landmarks Register or National Register of Historic Places or would be contrary to state or federal law.

4. An applicant for a density bonus pursuant to subdivision 2 a or b may request a waiver or reduction in any local parking ratios or requirements. The locality shall grant the waiver or reduction unless the locality is able to make a written determination that such waiver or reduction would have a specific, adverse impact upon health, safety, or the physical environment of residents of the locality. The locality may also recommend to the applicant modifications of the initial request for waiver or reduction of local development standards that would satisfy the locality's concerns. This subdivision does not preclude a locality from reducing or eliminating a parking requirement for development projects of any type in any location.

F. A locality establishing an affordable housing dwelling unit program in any ordinance shall establish in its general ordinances, adopted in accordance with the requirements of subsection B of § 15.2-1427, reasonable regulations and provisions as to the following:

The sales and rental price for affordable dwelling units within a development shall be established such that the owner or applicant, or both, shall not suffer economic loss as a result of providing the required affordable dwelling units. For purposes of this subsection, "economic loss" for sales units means that result when the owner or applicant of a development fails to recoup the cost of construction and certain allowances as may be determined by the designee of the governing body for the affordable dwelling units, exclusive of the cost of land acquisition and cost voluntarily incurred but not authorized by the ordinance, upon the sale of an affordable dwelling unit.

G. Any locality establishing an affordable housing dwelling unit program pursuant to this section shall not condition the submission, review, or approval of any application for a housing development on the basis of an applicant's decision to incorporate units deemed affordable for low-income or very-low-income households.

H. Notwithstanding any other provisions of this chapter, as used in this section, unless the context requires a different meaning:

"Affordable" means, as a guideline, housing that is affordable to households with incomes at or below the area median income, provided that the occupant pays no more than 30 percent of his gross income for gross housing costs, including utilities.

"Density bonus" means a density increase over the otherwise maximum allowable gross residential density as of the date of application by the applicant to the locality, or, if elected by the applicant, a lesser percentage of density increase, including but not limited to no increase in density.

"Development standard" includes any local land use, site, or construction regulation, including but not limited to height restrictions, setback requirements, side yard requirements, minimum area requirements, minimum lot size requirements, floor area ratios, or onsite open-space requirements that applies to a residential or mixed-use development pursuant to any local ordinance, policy, resolution, or regulation.

"Housing development" means a specific work or improvement within the Commonwealth, whether multifamily residential housing or single-family residential housing undertaken primarily to provide dwelling accommodations, including the acquisition, construction, rehabilitation, preservation, or improvement of land, buildings, and improvements thereto, for residential housing, and such other nonhousing facilities as may be incidental, related, or appurtenant thereto.

"Low-income household" means any individual or family whose incomes do not exceed 80 percent of the area median income for the locality in which the housing development is being proposed.

"Maximum allowable residential density" means the density allowed under the zoning ordinance and land use element of the comprehensive plan, or, if a range of density is permitted, means the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project. If the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail.

"Very-low-income household" means any individual or family whose incomes do not exceed 50 percent of the area median income for the locality in which the housing development is being proposed.